



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2022-0002-N-11]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On April 1, 2022, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to

www.reginfo.gov/public/do/PRAMain. Find the particular ICR by selecting “Currently under 30-day Review - Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, at email: Hodan.Wells@dot.gov or telephone: (202) 868-9412.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices

seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On April 1, 2022, FRA published a 60-day notice in the *Federal Register* soliciting comment on the ICR for which it is now seeking OMB approval. *See* 87 FR 19176. FRA received one comment from the Association of American Railroads (AAR) related to the proposed collection of information.

In its comment letter, AAR expressed its concerns about the reliability of the data collected by the blocked crossing portal, noting the potential for the public to submit reports of trains moving through highway-rail grade crossings in the ordinary course of operations rather than of avoidable, blocked crossing incidents. AAR also noted that there is no mechanism in place to guard against individuals submitting multiple reports of a single event, asserting that a small number of people could repeatedly submit a high volume of complaints regarding trains at specific locations. Finally, AAR asserted that FRA failed take into account the paperwork burden imposed when FRA requests further information from a railroad as part of its blocked crossing investigation.

As referenced below, the Infrastructure Investment and Jobs Act, (Pub. L. 117-58), also known as the “Bipartisan Infrastructure Law” (BIL) requires that FRA maintain an online portal and corresponding database to receive information from the public regarding blocked highway-rail grade crossings. Section 22404(i) of BIL requires FRA to submit a report to Congress that discusses, among other things, whether FRA’s blocked crossing portal continues to be an effective method to collect blocked crossing information, as well as changes that could be made to improve its effectiveness. On June 14, 2022, FRA published a request for information (RFI) in the *Federal Register*, soliciting comments on how FRA’s engagement with affected parties and changes to the portal and related operations can improve the effectiveness of the portal. *See* 87 FR 36036. FRA encourages AAR and other affected parties to submit its suggestions on

how to improve the effectiveness of the portal to the RFI docket.

FRA appreciates AAR's comments about the quality of the blocked crossing portal's collected data and seeks comments through the RFI on ways in which it can be improved. Before FRA follows up with a railroad on a reported blocked crossing, FRA reviews information available about the blocked crossing incident. If FRA determines that the blocked crossing arose because a train moved through a highway-rail grade crossing in the ordinary course of operations, FRA will not investigate the incident further. In addition, if FRA determines that the railroad had an operational justification for blocking the crossing, FRA will include this information in its records.

Since the introduction of the blocked crossing portal in 2020, FRA has streamlined its procedures for following-up with railroads in response to blocked crossing reports. In response to AAR feedback that FRA's inquiries were too onerous, FRA completes the majority of its follow-up requests after a brief phone call with the involved railroad or during stakeholder meetings. Additionally, FRA also recognizes that railroads may not collect the requested information and, in those circumstances, FRA considers the response of "not known" sufficient. Nonetheless, FRA agrees with AAR that it should adjust its estimated paperwork burdens to account for railroad responses to FRA's inquiries. Accordingly, FRA is updating its burden estimates in the re-published PRA table to better account for railroads' burdens in response to FRA's follow-up inquiries.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(a); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents

should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Inquiry into Blocked Highway-Rail Grade Crossings throughout the United States.

OMB Control Number: 2130-0630

Abstract: In 2020, FRA created a dedicated website allowing the public and law enforcement personnel to use web-based forms to voluntarily submit information about blocked crossings to FRA.¹ Under the currently approved information collection request, users provide information regarding the location, date, time, duration, and immediate impacts of highway-rail grade crossings blocked by slow-moving or stationary trains. FRA uses the data collected to gain a more complete picture of where, when, for how long, and what impacts result from reported blocked crossing incidents.² Additionally, FRA uses the information to respond to congressional inquiries so that congressional staff

¹ Access to the web-based form used by the public is unrestricted. Access to the web-based form used by law enforcement personnel and first responders is restricted to law enforcement personnel with usernames and passwords managed by FRA.

² The data collection is not designed to provide a representative sample or create generalizable statistics. Additionally, the data gathered from this collection is not suitable for use in budgetary requests or regulatory proposals.

can respond to their constituents. Furthermore, FRA uses the information gathered to facilitate meetings, outreach, and other solutions for stakeholders to reduce or eliminate blocked crossing concerns.

Upon accessing these web-based forms, users are notified there are no Federal laws or regulations that specifically address the length of time a train may occupy a highway-rail grade crossing. Users are also notified that information submitted will not be forwarded to a railroad, State, or local agency, and will only being used for data collection purposes to determine the locations, times, and impacts of blocked crossings.

On November 15, 2021, the BIL was enacted. In addition to mandating that FRA establish an online portal and corresponding database to receive information regarding blocked highway-rail grade crossings, section 22404 of BIL “encourages each complainant to report the blocked crossing to the relevant railroad.” Therefore, in preparation for this new statutory mandate, FRA proposes to modify the existing web-based forms by adding one question, “have you contacted the railroad?” Otherwise, the rest of the questions on the web-based forms will remain the same.³

Currently, there are no Federal laws or regulations that specifically address how long a train may occupy a crossing, whether stationary or operating at slow speeds. Some States and local municipalities have laws that vary in how long trains are permitted to occupy crossings. However, there are legitimate operational reasons why trains may block grade crossings, including trains stopping for compliance with Federal regulatory requirements (such as required safety tests and inspections). Therefore, some courts have found that State laws and regulations that address how long trains may occupy grade crossings have the effect of regulating aspects of railroad operations currently regulated by FRA and are thus preempted by the Federal railroad safety statutes and regulations.

³ The average time per response will be remain at 3 minutes per response since the modification made under BIL requirement is *de minimis*.

(*See CSX Transp., Inc. v. City of Plymouth*, 283 F.3d 812 (6th Cir. 2002)). In addition, some courts have found State laws and regulations attempting to limit the time trains are permitted to occupy grade crossings to be preempted by the Interstate Commerce Commission Termination Act, which provides the Surface Transportation Board with broad jurisdiction over railroad operations. (*See Elam v. Kansas City So.*, 635 F.3d 796 (5th Cir. 2011)).

There are potential safety concerns with crossings that are blocked by trains. For instance, pedestrians may crawl under or through stationary trains. Also, emergency response vehicles and first responders may be delayed when responding to an incident or transporting persons to a hospital. In addition, drivers may take more risks, such as driving around lowered gates at a crossing or attempting to beat a train through a crossing without gates, in order to avoid a lengthy delay if they are aware that trains routinely block a crossing for extended periods of time. There are also potential economic impacts that affect businesses, such as stores or restaurants not being accessible to their customer base for an extended time period. Finally, highway-rail grade crossings that are blocked for extended time periods may create societal nuisances, such as roadway congestion, delayed mail service and deliveries, disrupted school and work arrival and dismissal, or missed appointments.

Type of Request: Revision of a currently approved collection.

Affected Public: Public individuals, law enforcement personnel, and first responders.

Form(s): FRA F 6180.175.

Respondent Universe: Public individuals, law enforcement personnel, and first responders.

Frequency of Submission: On occasion.

Reporting Burden:

Section ⁴	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total cost equivalent (D) = C * wage rate ⁵
General public via the unrestricted form on the FRA website	15,500 responses	3 minutes	775 hours	\$20,925
Law enforcement personnel (including first responders) via the limited access form on the FRA website	350 responses	3 minutes	17.5 hours	\$895
Monthly meeting between FRA and Class I railroads on blocked crossings—Review of blocked crossings data from FRA’s blocked crossings portal ⁶	12 meetings and reviews	20 hours	240 hours	\$18,586
Total	15,862 responses	N/A	1,033 hours	\$40,406

Total Estimated Annual Responses: 15,862.

Total Estimated Annual Burden: 1,033 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$40,406.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501-3520.

Allison Ishihara Fultz,

Chief Counsel.

⁴ The current inventory exhibits a total burden of 250 hours while the total burden of this notice is 1,033 hours. The increase in burden hours is due to an anticipated increase in the number of responses.

⁵ For the value of the public's time, FRA used an hourly rate of \$27 per hour from the Department of Labor, Bureau of Labor Statistics (BLS). For law enforcement and first responder respondents, FRA used an hourly wage rate of \$49.74 per hour that includes an average benefit rate of \$20.87 from BLS' Occupational Employment Statistics (OES) 33-3000, classified within NAICS 999200, State Government—excluding schools and hospitals. See https://www.bls.gov/oes/current/naics4_999200.htm. For railroad respondents, FRA used an hourly wage rate of \$77.44 that includes a 75-percent overhead charge from the Surface Transportation Board's 2020 Full Year Wage A&B data series for railroad workers.

⁶ FRA adds this row in response to AAR's comments that FRA should account for railroads' estimated paperwork burdens in responding to FRA's follow-up inquiries on blocked crossings.

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